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ANGLIN, J.

JULY 18TH, 1904.

WEEKLY COURT.

FALLER v. AYLEN.

*Arbitration and Award—Patent Act of Canada—Appointment of Arbitrators—Deputy Commissioner of Patents—Review—Injunction—Powers of Court—Defendants Evading Service.*

Motion by plaintiff to continue an injunction granted by one of the local Judges at Ottawa restraining defendants, arbitrators under the Patent Act of Canada, from proceeding to make an award. The statute, sec. 19, sub-sec. 3, reads: "If there are more than two conflicting applications" (which was this case) "and if the parties do not all unite in appointing three arbitrators, the commissioner, or the deputy commissioner, or person appointed to perform the duty of that officer, may appoint the three arbitrators for the purposes aforesaid."

The deputy commissioner caused notices to be sent out calling upon the three applicants, Faller, the American Machine Telephone Co., and Callender, to name arbitrators. The notice to Faller and the telephone company reached these claimants; that intended for Callender was alleged to have been misdirected and not to have reached him. Upon the telephone company intimating to the deputy commissioner that they could not in any event or under any circumstances unite with the other claimants in choosing a board of arbitrators, the deputy commissioner proceeded, without further notice to Callender, himself to appoint the defendants as the three arbitrators under the provisions of the statute. It was this act which was impugned by plaintiff as unlawful and beyond the power of the deputy commissioner, upon the ground that his right of appointment